ADAM GORDON
United States Attorney
ERIN M. DIMBLEBY
California Bar No. 323359
Assistant U.S. Attorney
Office of the U.S. Attorney
880 Front Street, Room 6293
San Diego, CA 92101-8893
Telephone: (619) 546-6987
Facsimile: (619) 546-7751
Email: erin.dimbleby@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

VLADIMIR ERNESTO PRIETO-CORDOVA,

Petitioner,

v.

CHRISTOPHER J. LAROSE; et al.,

Respondents.

Case No.: 25-cv-2824-CAB-DDL

RESPONDENTS' RESPONSE IN OPPOSITION TO PETITIONER'S HABEAS PETITION AND APPLICATION FOR TEMPORARY RESTRAINING ORDER

I. Introduction

Petitioner is currently in removal proceedings under 8 U.S.C. § 1229a and is detained in Immigration and Customs Enforcement (ICE) custody pursuant to 8 U.S.C. § 1225(b)(2). Petitioner seeks release. Through multiple provisions of 8 U.S.C. § 1252, Congress has stripped federal courts of jurisdiction over challenges to the commencement of removal proceedings, including the consequent detention pending removal proceedings. Moreover, Petitioner's detention is mandated by statute. The Court should deny Petitioner's request for interim relief and dismiss the petition.

II. Factual Background[1]

Petitioner is a citizen and national of Venezuela. On or about, January 23, 2022, he entered the United States without being admitted, paroled, or inspected. He was apprehended by United States Border Patrol (USBP) agents and charged with inadmissibility under 8 U.S.C. § 1182(a)(6)(A)(i), as an alien present in the United States who has not been admitted or paroled. He was then placed in removal proceedings under 8 U.S.C. § 1229a, issued a Notice to Appear (NTA), and released from DHS custody on his own recognizance. On October 9, 2025, Petitioner was apprehended by ICE officers. He is currently detained at the Otay Mesa Detention Center pursuant to 8 U.S.C. § 1225(b)(2). Petitioner's § 1229a removal proceedings remain ongoing.

III. Argument

A. Petitioner's Claims and Requested Relief are Jurisdictionally Barred

Petitioner bears the burden of establishing that this Court has subject matter jurisdiction over his claims. *See Ass'n of Am. Med. Coll. v. United States*, 217 F.3d 770, 778-79 (9th Cir. 2000); *Finley v. United States*, 490 U.S. 545, 547-48 (1989). As a threshold matter, Petitioner's claims are jurisdictionally barred under 8 U.S.C. § 1252(g) and 8 U.S.C. § 1252(b)(9).

[1] The attached exhibits are true copies, with redactions of private information, of documents obtained from ICE counsel.

In general, courts lack jurisdiction to review a decision to commence or adjudicate removal proceedings or execute removal orders. *See* 8 U.S.C. § 1252(g) ("[N]o court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to commence proceedings, adjudicate cases, or execute removal orders."); *Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483 (1999) ("There was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's discrete acts of "commenc[ing] proceedings, adjudicat[ing] cases, [and] execut[ing] removal orders"—which represent the initiation or prosecution of various stages in the deportation process."); *Limpin v. United States*, 828 Fed. App'x 429 (9th Cir. 2020) (holding district court properly dismissed under 8 U.S.C. § 1252(g) "because claims stemming from the decision to arrest and detain an alien at the commencement of removal proceedings are not within any court's jurisdiction"). In other words, § 1252(g) removes district court jurisdiction over "three discrete actions that the Attorney may take: [his] 'decision or action' to 'commence proceedings, adjudicate cases, or execute removal orders.'" *Reno*, 525 U.S. at 482 (emphasis removed). Petitioner's claims necessarily arise "from the decision or action by the Attorney General to commence proceedings [and] adjudicate cases," over which Congress has explicitly foreclosed district court jurisdiction. 8 U.S.C. § 1252(g).

Section 1252(g) also bars district courts from hearing challenges to the method by which the government chooses to commence removal proceedings, including the decision to detain an alien pending removal. *See Alvarez v. ICE*, 818 F.3d 1194, 1203 (11th Cir. 2016) ("By its plain terms, [§ 1252(g)] bars us from questioning ICE's discretionary decisions to commence removal" and bars review of "ICE's decision to take [plaintiff] into custody and to detain him during his removal proceedings").

Other courts have held, "[f]or the purposes of § 1252, the Attorney General commences proceedings against an alien when the alien is issued a Notice to Appear before an immigration court." *Herrera-Correra v. United States*, No. 08-2941 DSF

(JCx), 2008 WL 11336833, at *3 (C.D. Cal. Sept. 11, 2008). "The Attorney General may arrest the alien against whom proceedings are commenced and detain that individual until the conclusion of those proceedings." *Id.* at *3. "Thus, an alien's detention throughout this process arises from the Attorney General's decision to commence proceedings" and review of claims arising from such detention is barred under § 1252(g). *Id.* (citing *Sissoko v. Rocha*, 509 F.3d 947, 949 (9th Cir. 2007)); *Wang*, 2010 WL 11463156, at *6; 8 U.S.C. § 1252(g). *But see Vasquez Garcia v. Noem*, No. 25-cv-02180-DMS-MMP, 2025 WL 2549431, at *4 (S.D. Cal. Sept. 3, 2025).

Moreover, under 8 U.S.C. § 1252(b)(9), "[j]udicial review of all questions of law and fact . . . *arising from any action taken or proceeding brought to remove an alien from the United States* under this subchapter shall be available only in judicial review of a final order under this section." Further, judicial review of a final order is available only through "a petition for review filed with an appropriate court of appeals." 8 U.S.C. § 1252(a)(5). The Supreme Court has made clear that § 1252(b)(9) is "the unmistakable 'zipper' clause," channeling "judicial review of all" "decisions and actions leading up to or consequent upon final orders of deportation," including "non-final order[s]," into proceedings before a court of appeals. *Reno*, 525 U.S. at 483, 485; *see J.E.F.M. v. Lynch*, 837 F.3d 1026, 1031 (9th Cir. 2016) (noting § 1252(b)(9) is "breathtaking in scope and vise-like in grip and therefore swallows up virtually all claims that are tied to removal proceedings"). "Taken together, § 1252(a)(5) and § 1252(b)(9) mean that *any* issue—whether legal or factual—arising from *any* removal-related activity can be reviewed *only* through the [petition for review] PFR process." *J.E.F.M.*, 837 F.3d at 1031 ("[W]hile these sections limit *how* immigrants can challenge their removal proceedings, they are not jurisdiction-stripping statutes that, by their terms, foreclose *all* judicial review of agency actions. Instead, the provisions channel judicial review over final orders of removal to the courts of appeal.") (emphasis in original); *see id.* at 1035 ("§§ 1252(a)(5) and [(b)(9)] channel review of all claims, including policies-and-practices challenges . . . whenever they 'arise from' removal proceedings").

Critically, "1252(b)(9) is a judicial channeling provision, not a claim-barring one." *Aguilar v. ICE*, 510 F.3d 1, 11 (1st Cir. 2007). Indeed, 8 U.S.C. § 1252(a)(2)(D) provides that "[n]othing . . . in any other provision of this chapter . . . shall be construed as precluding review of constitutional claims or questions of law raised upon a petition for review filed with an appropriate court of appeals in accordance with this section." *See also Ajlani v. Chertoff*, 545 F.3d 229, 235 (2d Cir. 2008) ("[J]urisdiction to review such claims is vested exclusively in the courts of appeals[.]"). The petition-for-review process before the court of appeals ensures that noncitizens have a proper forum for claims arising from their immigration proceedings and "receive their day in court." *J.E.F.M.*, 837 F.3d at 1031–32 (internal quotations omitted); *see also Rosario v. Holder*, 627 F.3d 58, 61 (2d Cir. 2010) ("The REAL ID Act of 2005 amended the [INA] to obviate . . . Suspension Clause concerns" by permitting judicial review of "nondiscretionary" BIA determinations and "all constitutional claims or questions of law."). These provisions divest district courts of jurisdiction to review both direct and indirect challenges to removal orders, including decisions to detain for purposes of removal or for proceedings. *See Jennings*, 583 U.S. at 294–95 (section 1252(b)(9) includes challenges to the "decision to detain [an alien] in the first place or to seek removal").

Accordingly, this Court lacks jurisdiction over this petition under 8 U.S.C. § 1252.

B. Petitioner Fails to Establish Entitlement to Interim Injunctive Relief

Petitioner has not established entitlement to interim injunctive relief. Petitioner has failed to show a likelihood of success on the underlying merits, a showing of irreparable harm, and that the equities tip in his favor. Thus, Petitioner's motion should be denied.

In general, the showing required for a temporary restraining order ("TRO") is the same as that required for a preliminary injunction. *See Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc.*, 240 F.3d 832, 839 (9th Cir. 2001). To prevail on a motion

for a TRO, a plaintiff must "establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see Nken v. Holder*, 556 U.S. 418, 426 (2009). Plaintiff must demonstrate a "substantial case for relief on the merits." *Leiva-Perez v. Holder*, 640 F.3d 962, 967-68 (9th Cir. 2011). When "a plaintiff has failed to show the likelihood of success on the merits, we need not consider the remaining three [*Winter* factors]." *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015).

The final two factors required for preliminary injunctive relief—balancing of the harm to the opposing party and the public interest—merge when the Government is the opposing party. *See Nken*, 556 U.S. at 435. Few interests, however, "can be more compelling than a nation's need to ensure its own security." *Wayte v. United States*, 470 U.S. 598, 611 (1985); *see also United States v. Brignoni-Ponce*, 422 U.S. 873, 878-79 (1975); *New Motor Vehicle Bd. v. Orrin W. Fox Co.*, 434 U.S. 1345, 1351 (1977).

1. No Likelihood of Success on the Merits

Likelihood of success on the merits is a threshold issue. *See Garcia*, 786 F.3d at 740. Petitioner cannot show a likelihood of success on the merits of his claim for alleged statutory and constitutional violations arising from his mandatory detention under 8 U.S.C. § 1225.

Section 1225(b)(2)(A) requires mandatory detention of "'an alien who is *an applicant for admission*, if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted[.]'" *Chavez v. Noem*, No. 3:25-cv-02325, 2025 WL 2730228, at *4 (S.D. Cal. Sept. 24, 2025) (quoting 8 U.S.C. § 1225(b)(2)(A)) (emphasis in original). Section 1225(a)(1) "expressly defines that '[a]n alien present in the United States who has not been admitted … shall be deemed for purposes of this Act *an applicant for admission*.'" *Id.* (quoting 8 U.S.C. § 1225(a)(1)) (emphasis in original). Here, Petitioner is an "alien

present in the United States who has not been admitted." Thus, as found by this district court in *Chavez v. Noem* and as mandated by the plain language of the statute, Petitioner is an "applicant for admission" and subject to the mandatory detention provisions of § 1225(b)(2).

As an applicant for admission detained under § 1225(b)(2), the only due process rights Petitioner has are those rights statutorily afforded by Congress. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 138–40 (2020) (rejecting the alien's due process claim and holding that he "has only those rights regarding admission that Congress has provided by statute"); *accord Mendoza-Linares v. Garland*, 51 F.4th 1146, 1167 (9th Cir. 2022) (holding that any rights the alien has "are purely statutory in nature and are not derived from, or protected by, the Constitution's Due Process Clause."). Section 1225(b)(2) does not provide Petitioner a right to have this Court determine whether he is entitled to release, nor does it provide him a right to a bond hearing before an IJ. *See Jennings*, 583 U.S. at 297 ("Nothing in the statutory text imposes any limit on the length of detention. And neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings."). Because the only process due Petitioner is that afforded under Section 1225(b)(2)(A), the Court must reject his claim that his detention violates the Fifth Amendment's Due Process Clause and deny his requested relief. *See Thuraissigiam*, 591 U.S. at 138–140; *Mendoza-Linares*, 51 F.4th at 1167 (9th Cir. 2022); *Rodriguez Diaz v. Garland*, 53 F.4th 1189, 1206 (9th Cir. 2022) ("The recognized liberty interests of U.S. citizens and aliens are not coextensive: the Supreme Court has 'firmly and repeatedly endorsed the proposition that Congress may make rules as to aliens that would be unacceptable if applied to citizens.'") (quoting *Demore v. Kim*, 538 U.S. at 522); *Zelaya-Gonzalez*, No. 23-cv-151-JLS-KSC, 2023 WL 3103811, at *4 ("Binding Ninth Circuit and Supreme Court precedents are clear that Petitioner lacks any rights beyond those conferred by statute, and no statute entitles Petitioner to a bond hearing.").

Even if the Court infers a constitutional right against prolonged mandatory

detention, Petitioner's claim still fails. Petitioner has been detained for less than a month. "In general, as detention continues past a year, courts become extremely wary of permitting continued custody absent a bond hearing." *Sibomana v. LaRose*, No. 22-cv-933-LL-NLS, 2023 WL 3028093, at *4 (S.D. Cal. Apr. 20, 2023) (citation omitted).

Because Petitioner is properly detained under § 1225, he cannot show entitlement to relief.

2. Irreparable Harm Has Not Been Shown

To prevail on his request for interim injunctive relief, Petitioner must demonstrate "immediate threatened injury." *Caribbean Marine Services Co., Inc. v. Baldrige*, 844 F.2d 668, 674 (9th Cir. 1988) (citing *Los Angeles Memorial Coliseum Commission v. National Football League*, 634 F.2d 1197, 1201 (9th Cir. 1980)). Merely showing a "possibility" of irreparable harm is insufficient. *See Winter*, 555 U.S. at 22. Detention alone is not an irreparable injury. *See Reyes v. Wolf*, No. C20-0377 JLR, 2021 WL 662659, at *3 (W.D. Wash. Feb. 19, 2021), *aff'd sub nom. Diaz Reyes v. Mayorkas*, 854 Fed.Appx. 190 (9th Cir. 2021) ("[C]ivil detention after the denial of a bond hearing [does not] constitute[] irreparable harm such that prudential exhaustion should be waived."). Further, "[i]ssuing a preliminary injunction based only on a possibility of irreparable harm is inconsistent with [the Supreme Court's] characterization of injunctive relief as an extraordinary remedy that may only be awarded upon a clear showing that the plaintiff is entitled to such relief." *Winter*, 555 U.S. at 22. Here, because Petitioner's alleged harm "is essentially inherent in detention, the Court cannot weigh this strongly in favor of" Petitioner. *Lopez Reyes v. Bonnar*, No 18-cv-07429-SK, 2018 WL 747861 at *10 (N.D. Cal. Dec. 24, 2018).

3. Balance of Equities Does Not Tip in Petitioner's Favor

It is well settled that the public interest in enforcement of the United States' immigration laws is significant. *See, e.g., United States v. Martinez-Fuerte*, 428 U.S. 543, 551-58 (1976); *Blackie's House of Beef*, 659 F.2d at 1221 ("The Supreme Court

has recognized that the public interest in enforcement of the immigration laws is significant.") (citing cases); *see also Nken*, 556 U.S. at 435 ("There is always a public interest in prompt execution of removal orders: The continued presence of an alien lawfully deemed removable undermines the streamlined removal proceedings IIRIRA established, and permits and prolongs a continuing violation of United States law.") (internal quotation omitted). Moreover, "[u]ltimately the balance of the relative equities 'may depend to a large extent upon the determination of the [movant's] prospects of success.'" *Tiznado-Reyna v. Kane*, Case No. CV 12-1159-PHX-SRB (SPL), 2012 WL 12882387, at * 4 (D. Ariz. Dec. 13, 2012) (quoting *Hilton v. Braunskill*, 481 U.S. 770, 778 (1987)). Here, as explained above, Petitioner cannot succeed on the merits of his claims. The balancing of equities and the public interest weigh heavily against granting Petitioner's equitable relief.

IV. CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Court deny the requests for relief and dismiss this action.

DATED: October 28, 2025

Respectfully submitted,

ADAM GORDON
United States Attorney

s/Erin M. Dimbleby
ERIN M. DIMBLEBY
Assistant United States Attorney
Attorneys for Respondents